

REMARKS

Applicant has carefully reviewed the Office Action mailed December 16, 2003 and expresses disappointment with the Examiner's decision to reopen prosecution to reinstate a previously withdrawn anticipation rejection, seemingly in contravention of the goal of avoiding "piecemeal" examination expressed in Section 707.07(g) of the Manual of Patent Examining Procedure.

In response to the reinstated objection to the drawings, it is noted that the issue raised was squarely addressed in detail in a response to the first Office Action, and the Examiner did not repeat the objection in the subsequent final Office Action. Under Section 707.07(e) of the Manual of Patent Examining Procedure, this led Applicant to believe that the requirement had been withdrawn or waived, especially since the drawings do indeed show the claimed gussets. Nevertheless, to obviate further contention on this trivial issue, claims 7 and 8 are amended as set forth above to eliminate reference to "gussets" and instead refer to "folds" (which are plainly shown in the drawings as comprising the gussets).

Turning to the substantive issues, Applicant respectfully traverses the "new" rejections of claims 1, 2, 4-6, 9, and 10 as allegedly being anticipated by U.S. Patent No. 3,951,284 to Fell et al. First of all, the stated anticipation rejections ignore limitations in the claims. For example, the rejection made at the top of page 3 of the Office Action ignores the requirement in claim 1 of "elongated" panels. Furthermore, the contention is made that the reference discloses an "access panel," when the claim actually requires an "access opening."

Accordingly, the Examiner has not shown with the requisite strict identity that each and every limitation of the claim is met, which is of course an unwavering requirement for maintaining an anticipation rejection.

The reason for this “oversight” is clear. The Fell et al. patent simply does not disclose “an access opening along at least one [elongated] *side panel* adapted for loading and unloading said cargo.” Rather, it merely shows the conventional opening formed in the *end panel* of the liner. On page 5 of the Action, the Examiner *expressly acknowledges* this fact by stating, “. . .Fell et al. do not explicitly teach the opening in the side of the liner. . .,” yet then surprisingly attempts to assert otherwise by making an anticipation rejection of claim 1 based on this patent. Similarly, independent claim 9 requires “cutting an access opening along at least one [elongated] *side panel* . . .,” which the Examiner concedes that the Fell et al. patent does not disclose. Accordingly, prosecution was ostensibly reopened to state rejections that the Examiner’s own remarks admit are untenable and unsupported.

With regard to the obviousness rejection of claims 1, 2, 4-6, 9 and 10 over the Fell et al. patent, it is submitted that it is deficient for several reasons. First of all, Section 2143.01 of the Manual of Patent Examining Procedure provides that “[i]f the proposed modification . . . of the prior art would change the principle of operation of the prior art invention being modified, *then the teaching . . . [is] not sufficient to render the claims prima facie obvious.*” (emphasis added). In this instance, modifying the liner in the proposed

manner would “change the principle of operation” of the “prior art invention” disclosed in the Fell et al. patent, which at col. 7, ll. 47-48 explains that “[o]nce the container has reached its destination *some means must be provided to tilt the container.*” (emphasis added). Moreover, this patent teaches that “. . .as the container empties it is tipped to allow the bulk material to flow down *towards the unloading end of the liner*” (col. 8, ll. 4-6, emphasis added).

From the foregoing, it is clear that the inventors only contemplated having an opening in the end of the liner, not in the side panel of the liner as required by claims 1 and 9 (even if their patent attorney intended to leave open the possibility of asserting infringement if the opening is placed in a different panel of the liner). Furthermore, modifying the liner as proposed would not allow for the desired “flow” of materials discussed in the Fell et al. patent. Even if a corresponding container, such as a rail car, was capable of tilting on its side, the contents of the container would not flow to the unloading *end* of the liner. Instead, only a portion of the contents would exit the side opening of the container, while the remainder would be pressed against the side wall of the container. Since the proposed liner modification would dramatically change the operation of “prior art invention” disclosed in the Fell et al. patent, it is believed that the *prima facie* case of obviousness is lacking.

Additionally, the passage cited by the Examiner as allegedly suggesting the proposed modification merely states that “. . .there is provided a device for transporting bulk material

in a shipping vehicle *having walls, one of which defines a door opening* and doors attached thereto. . .” (emphasis added). Rather than suggesting that “the door to the container can be in any of the walls to the container,” this passage merely states that one of the *walls* defines a *door opening*. To stretch this passage as proposed would *require* the entire elongated side wall of the container “define” a door opening. Not only would this result in a structurally unsound container, but it would render the Fell et al. patent inoperable. In particular, if the entire side wall defines the door of the container, portions of the liner would simply fall out of the container when it is tilted, as *must* be done for emptying the contents of the container according to the Fell et al. patent. Clearly, this is not the end result desired by this patent, which teachings must be construed in *pari materia* rather than in the piecemeal approach taken by the Examiner. See M.P.E.P. Section 2141.03 (“*A prior art reference must be considered in its entirety*, i.e., as a whole, including portions that would lead away from the claimed invention.”) (emphasis added).

As has been pointed out in several communications to no avail, the rejections of the several of the dependent claims are also deficient. For example, claim 5 requires that the opening is along the mid-point of one of the elongated side panels. Since it is conceded that the Fell et al. patent does not even teach providing such an opening in a side panel, it certainly cannot teach or suggest providing it at a mid-point of the panel. Moreover, even if the opening in the liner disclosed in the Fell et al. patent were provided at the mid-point

of the end panel, it is emphasized that this liner would not work in a container with a side door, since the elongated sides of that liner would not “substantially” match the corresponding sides of the container (especially since the liner 20 disclosed is only of “3/4” height; see col. 5, lines 38-39). Even assuming for the sake of argument that the reference would lead a skilled artisan to place the opening in the elongated side panel (which is not conceded), nothing would motivate one to provide it at the midpoint.

As for claim 6, the contention made in support of unpatentability is that the Fell et al. patent teaches “access openings for containers having openings on one or more sides depending on the configuration of the container.” However, the Examiner fails to cite to any portion of the document as supplying this teaching. Applicant’s Counsel scoured this reference, but finds that it is limited to providing one or more access openings on a *single end panel* of a liner. It simply does not contemplate providing openings in a second side panel substantially opposite the first opening, as expressly required by the claim. This is because the Fell et al. liner is intended for use on a trailer or other container including doors on only a single end. Thus, it certainly cannot “suggest” this modification, and no other convincing line of reasoning is provided as to why a skilled artisan would want to provide a second opening at the opposite end of the liner disclosed in the Fell et al. patent, when the opening would simply face the end wall of the trailer near the cab, which is *always* closed.

The Examiner makes a “new” rejection of claim 7 based on the combination of the Fell et al. patent and the Krien ‘197 patent (which incidentally is owned by the Applicant). Again, the rejection made plainly ignores what is actually required by this claim, and is thus fatally deficient.

New claims 12-20 are also presented for consideration, all of which are believed to be directed to subject matter supported by the original specification and drawings. New claim 12 recites the liner of claim 1 in combination with a source of air for erecting the liner, such as the blowers 15b, 16b shown in Figure 1. Since the liner in the Fell et al. patent is erected in a completely different fashion (see col. 4, lines 42-53), no corresponding structure is present. Consequently, the claim is directed to allowable subject matter.

New independent claim 13 recites a liner for an elongated container for use in shipping cargo comprising four elongated panels of impervious film adapted to substantially match the elongated sides, top and bottom of the container, with each elongated panel having a first length. First and second end panels complete the liner, each having a second length less than the first length, and an access opening is formed along at least one side panel adapted for loading and unloading the cargo. The Fell et al. patent plainly does not disclose, teach, or suggest providing a liner with a “longer” side panel having an access opening and “shorter” end panels, as is claimed. Hence, it cannot anticipate or render the claimed invention obvious.

Dependent claim 14 requires that the liner is free-standing when erected in said container. The liner 20 shown in the Fell et al. patent includes tabs 35, each of which is “connected to a hook 26 by means of a stretchable connector 37” associated with the container. The liner 20 is thus not free-standing.

Dependent claim 15 requires that the first and second “shortened” end panels are free of any openings. The Fell et al. patent discloses the exact opposite arrangement. Thus, it certainly cannot anticipate or render obvious the invention of this claim.

Dependent claim 16 requires a manifold including a plurality of orifices for enabling installation of the liner via air pressure. Again, the liner 20 of the Fell et al. patent is suspended from the container using hooks and connectors. Consequently, no such manifold is provided.

Independent claim 17 recites a liner for an elongated container for use in shipping cargo comprising elongated top, bottom, first side and second side panels of impervious film adapted to substantially match the elongated top, bottom and sides of the container, along with uninterrupted first and second end panels free of any openings to complete the liner. A first access opening along the first side panel adapted for loading and unloading the cargo, and a second access opening along the second side panel substantially opposite the first opening for also loading and unloading the cargo. Regardless of the Examiner’s position regarding where the opening is located, it must be conceded that neither the Fell et al. patent

nor any of the other cited references disclose, teach, or suggest providing multiple openings in different panels of a liner. Consequently, this claim is believed to be in condition for allowance.

Dependent claim 18 requires that the liner of claim 17 is free-standing when erected in the container. Again, the liner 20 in the Fell et al. patent is erected using a complicated arrangement of hangers, which is in stark and total contrast to the simplified approach proposed by the Applicant.

Finally, independent claim 19 reads on a method of installing a liner for an elongated container for use in shipping cargo comprising the steps of providing the liner with four elongated panels of impervious film adapted to substantially match the elongated sides, top and bottom of the container and first and second end panels to complete said liner, forming an access opening along at least one side panel adapted for loading and unloading the cargo and positioning said liner in the container such that the liner is free-standing. Dependent claim 20 then qualifies that the positioning step involves using air to erect the liner. None of these steps are taught or suggested by the Fell et al. patent.

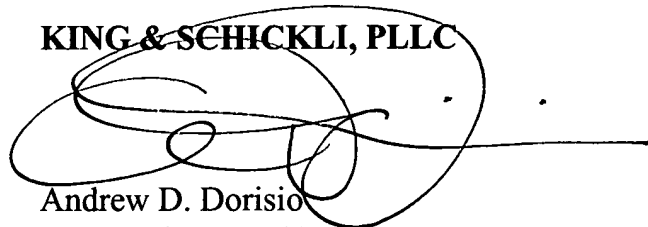
In summary, Applicant has addressed all issues raised in the Office Action. In particular, the manner in which claims 1 and 9 patentably distinguish over the Fell et al. patent has been explained convincingly and in detail. The independent patentability of several of the dependent claims is also established, as is the patentability of the new claims

S.N. 09/684,032

12-20. Since all claims are believed to be in condition for allowance, an early notice to this effect is earnestly solicited. However, if the Examiner finds that some minor issue has been overlooked, he is encouraged to contact the Applicant's Counsel at the number listed below in order to reduce costs and expedite the allowance of the application. Also, any fees due for processing this document may be debited from Deposit Account 11-0978.

Respectfully submitted,

KING & SCHICKLI, PLLC



Andrew D. Dorisio
Registration No. 41,713

247 North Broadway
Lexington, Kentucky 40507
(859) 252-0889

Certificate of Mailing

I hereby certify that this correspondence
is being deposited with the United States Postal
Service as first class mail addressed to Mail Stop
Fee Amendment, Commissioner for Patents
P.O. Box 1450, Alexandria VA 22313-1450, on
Date 3/11/04

March 11, 2004